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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,927	09/22/1999	JAMES D. CARLSON	IBNR-011CN	3965

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EXAMINER

EMDADI, KAMRAN

ART UNIT	PAPER NUMBER
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2664

DATE MAILED: 05/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/400,927

Applicant(s)

CARLSON ET AL.

Examiner

Kamran Emdadi

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "interface units" of claims 1 and 8 must be shown by the figures to enable a type of packet source destination device such as a switch, a workstation/computer, or server/computer etc. The data ports will most likely be better explained as to what type of data source, destination, or forwarding device they ports are communicating against. A channel is mentioned in both claims 1 and 8 as a means to communicate data on and this means must be shown to be a type of medium, connection, or protocol enabled line source etc. as to the switch plane being a part of a switching fabric defined by the specification as a "switching system" the physical aspect of a switch plane must be better explained for examining purposes all of the features must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
3. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

- Regarding independent claims 1 and 8, the “interface units” of claims 1 and 8 must be shown by the figures to enable a type of packet source destination device such as a switch, a workstation/computer, or server/computer etc. The data ports will most likely be better explained as to what type of data source, destination, or forwarding device they ports are communicating against. A channel is mentioned in both claims 1 and 8 as a means to communicate data on and this means must be shown to be a type of medium, connection, or protocol enabled line source etc. as to the switch plane being a part of a switching fabric defined by the specification as a “switching system” the physical aspect of a switch plane must be better explained for examining purposes, the plane is not known to be a portion of a switching system less or more encompassing than a packet switching device, therefore the functionality of a switch plane against a data port says little as to whether the plane is a series of switches or less a single switch.
- Claim 4, cites “circuitry is reallocated”, it is unclear to examiner how circuitry can be reallocated as circuitry is known to be hard-wired, if the circuitry is disengaged to reduce the active signaling activity for a switch plane, the description of reallocating and method of reducing is unclear and requires explanation.

- Claims 6, 9, and 14 teach and "allocation table" the allocation method is unknown to the examiner and must be explained as to the physical and or procedural aspect of allocating.
5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).
 6. A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.
 7. Claims 1-14 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-14 of copending Application No. 09333218. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
 - Norris (US Patent No. 5805614) Fault tolerant switch fabric.
 - Grant et al. (US Patent No. 5528584) path allocation with optic switch.
 - Hart et al. (US Patent No. 4706081) bridging LANs.
 - Niehaus et al. (US Patent No. 5189665) Programmable crossbar switch.

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- Ramaswami et al. (US Patent No. 5805614) Fault tolerant switch fabric.
- Lee et al. (US Patent No. 5821875) Data switching device.
- Proctor et al. (US Patent No. 5703879) ATM switching arrangement.
- Schwartz (US Patent No. 6434115) Packet switching method.

Kamran Emdadi

04/22/2003

KWANG BIN YAO
PRIMARY EXAMINER

